



STATE OF CONNECTICUT

OFFICE OF STATE ETHICS

Draft Advisory Opinion No. 2015-4

August 12, 2015

Question Presented: The petitioner asks whether General Statutes § 1-83 (a) (1) requires the appointed members of the following statutorily created committees to file Statements of Financial Interests: Bioscience Innovation Advisory Committee, Regenerative Medicine Research Advisory Committee, and Regenerative Medicine Research Peer Review Committee.¹

Brief Answer: Because the appointed members of those committees do not fit within any of the categories of filers listed in § 1-83 (a) (1), we must conclude that they need not file Statements of Financial Interests under that provision.

At its May 2015 regular meeting, the Citizen's Ethics Advisory Board ("Board") granted the petition for an advisory opinion submitted by Scott L. Murphy, Esq., of Shipman & Goodwin, LLP, on behalf of Connecticut Innovations, Incorporated, a quasi-public agency of the state of Connecticut. The Board now issues this advisory opinion in accordance with General Statutes § 1-81 (a) (3)

¹After this question was submitted, the Regenerative Medicine Research Peer Review Committee was eliminated by Public Acts 2015, No. 15-222, effective July 1, 2015. Nevertheless, because (as noted by the petitioner) this committee "did exist through June 30, 2015," we will address whether they were required filers under § 1-83 (a) (1).

of the Code of Ethics for Public Officials (“ethics code”).²

Facts

The following facts, as set forth by the petitioner, are relevant to this opinion:

I am writing on behalf of Connecticut Innovations, Incorporated (“CI”), a quasi-public agency of the State of Connecticut, to request an advisory opinion as to the applicability of the requirements of Section 1-83 of the Code of Ethics for Public Officials pertaining to the filing of Statements of Financial Interest to the appointed members of the Bioscience Innovation Advisory Committee, the Regenerative Medicine Research Advisory Committee and the Regenerative Medicine Research Peer Review Committee.

By way of background, Section 32-41cc of the General Statutes establishes the Connecticut Bioscience Innovation Fund, which is governed by the Bioscience Innovation Advisory Committee created by Section 32-41bb of the General Statutes. Section 32-41kk of the General Statutes establishes the Regenerative Medicine Research Fund, which is governed by the Regenerative Medicine Research Advisory Committee created by Section 32-41ll of the General Statutes and advised by the Regenerative Medicine Research Peer Review Committee created by Section 32-41mm of the General Statutes.

CI acts as administrator of both the Connecticut Bioscience Innovation Fund and the Regenerative Medicine Research Fund pursuant to, respectively, Section 32-41cc(f) and Section 32-41ll(f) of the General Statutes. In its role as administrator, CI supports the activities of each of the three committees referenced above, including arrangements for appropriate ethics training given that the members of each such committee are deemed to be “public officials” of the State of Connecticut (see Sections 32-41bb(e), 32-

²Chapter 10, part I, of the General Statutes.

41ll(d) and 32-41mm(b), respectively). In that connection, the question has arisen whether the appointed members of each such committee are required to file Statements of Financial Interest pursuant to Section 1-83 of the General Statutes. (Both the Bioscience Innovation Advisory Committee and the Regenerative Medicine Research Advisory Committee also have *ex officio* members who may already be subject to Section 1-83 by virtue of their other State positions, so the focus of this inquiry is on the appointed members in each case.)

CI wishes to be in a position to offer definitive guidance to such appointed members, and therefore requests an advisory opinion on the question of the applicability of the requirements of Section 1-83 pertaining to the filing of Statements of Financial Interest to the appointed members of the Bioscience Innovation Advisory Committee, the Regenerative Medicine Research Advisory Committee and the Regenerative Medicine Research Peer Review Committee.

Analysis

We begin with some additional background concerning the committees at issue—the Bioscience Innovation Advisory Committee, the Regenerative Medicine Research Advisory Committee, and the Regenerative Medicine Research Peer Review Committee (collectively, “Committees”)—and their respective relationships with Connecticut Innovations, Incorporated (“CI”), a “quasi-public agency,” as defined in the ethics code.³

First up is the Bioscience Innovation Advisory Committee, which was established by Public Acts 2013, No. 13-239. It has thirteen members, including four gubernatorial appointees, six legislative appointees, two *ex officio* members (i.e., the Commissioner of Economic and Community Development and Commissioner of Public Health), and the CI chief executive officer, who serves as its chairperson.⁴ The committee is tasked with “steering the direction

³General Statutes § 1-79 (12).

⁴General Statutes § 32-41bb (a).

of,” and “approving expenditures” from, the Connecticut Bioscience Innovation Fund, a “\$200 million, 10-year evergreen fund” established “to drive innovation in the biosciences throughout Connecticut by providing focused financial assistance to startups, early-stage businesses, nonprofits, and accredited colleges and universities.”⁵ The fund is “held, administered, invested and disbursed by” CI,⁶ which must also “provide any necessary staff, office space, office systems and administrative support for the operation of the” fund.⁷

Next up is the Regenerative Medicine Research Advisory Committee, which replaced the Stem Cell Research Advisory Committee, via Public Acts 2014, No. 14-98. The new committee has eighteen members, including four gubernatorial appointees, twelve legislative appointees, the Commissioner of Public Health, and the CI chief executive officer, who serves as its chairperson.⁸ It “is responsible for overseeing” the Regenerative Medicine Research Fund, a CI-administered fund from which “millions of dollars in grants [are provided] each year to scientists who are conducting biomedical or embryonic or human adult stem cell research”⁹ Specifically, the committee must “develop an application for grants-in-aid . . . for the purpose of conducting regenerative medicine research”; “receive applications for such grants-in-aid”; and “direct the [CI] chief executive officer . . . with respect to the awarding of such grants-in-aid after considering recommendations from the Regenerative Medicine Research Peer Review Committee”¹⁰

Last up is the just-mentioned Regenerative Medicine Research Peer Review Committee, which replaced the Stem Cell Research Peer Review Committee, via P.A. 14-98. This new committee has five members, each of whom is appointed by the CI chief executive officer,¹¹ and it has two primary charges: to “review all applications submitted by eligible institutions for . . . grants-in-aid” for

⁵Bioinnovation Connecticut, Connecticut Bioscience Innovation Fund (CBIF) Frequently Asked Questions (FAQ) (July 22, 2015), available at <http://www.bioinnovationct.com/ctbioscience-fund/> (last visited August 10, 2015).

⁶General Statutes § 32-41cc (a).

⁷General Statutes § 32-41cc (f).

⁸General Statutes § 32-41ll (a) and (b).

⁹<http://www.bioinnovationct.com/regen/> (last visited August 10, 2015).

¹⁰General Statutes § 32-41kk (b).

¹¹General Statutes § 32-41mm (a).

regenerative medicine research, and to “make recommendations to the [recently discussed] Regenerative Medicine Research Advisory Committee . . . with respect to the ethical and scientific merit of each application.”¹² Members of this committee “may receive compensation from [CI] for reviewing [such] grant-in-aid applications,” the rate of which “shall be established by the [CI] board of directors”¹³

Importantly, the enabling legislation for each of those Committees contains the following language: Members “shall be deemed public officials and shall adhere to the code of ethics for public officials set forth in chapter 10.”¹⁴

Among the ethics code’s many provisions is General Statutes § 1-83 (a) (1), which requires *certain* public officials and state employees to “file . . . a statement of financial interests for the preceding calendar year with the Office of State Ethics on or before the May first next in any year in which they hold such an office or position.” And it is this filing requirement that is the subject of the petitioner’s question, which is this: whether it attaches to the appointed members of the three Committees.

The answer to that question is a matter of statutory construction—specifically, the construction of § 1-83 (a) (1)—the “fundamental objective” of which “is to ascertain and give effect to the apparent intent of the legislature.”¹⁵ In seeking to determine the meaning of § 1-83 (a) (1), we are directed to consider, first, its text and its relationship to other statutes; and if, after doing so, the text’s meaning “is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered.”¹⁶

Turning, then, to the relevant statutory text, § 1-83 (a) (1) requires that the following categories of individuals “file . . . a statement of financial interests”:

¹²General Statutes § 32-41mm (c).

¹³General Statutes § 32-41mm (d).

¹⁴General Statutes §§ 32-41bb (e), 32-41ll (d), and 32-41mm (b).

¹⁵(Internal quotation marks omitted.) *State v. Brown*, 310 Conn. 693, 702 (2013).

¹⁶General Statutes § 1-2z.

- “state-wide elected officers,”
- “members of the General Assembly,”
- “department heads and their deputies,”
- “members or directors of each quasi-public agency,”
- “members of the Investment Advisory Council,”
- “state marshals,” and
- “such members of the Executive Department and such employees of quasi-public agencies as the Governor shall require.”

We can quickly dispense with most of the categories, for the Committees’ appointed members, as such, are not “state-wide elected officers,” “members of the General Assembly,” “department heads and their deputies,” “members of the Investment Advisory Council,” or “state marshals.” That leaves just two categories: “members or directors of each quasi-public agency” and “such members of the Executive Department and such employees of quasi-public agencies as the Governor shall require”

1. “[M]embers or directors of [a] quasi-public agency”?

Starting with the former, we must determine whether the appointed members of the Committees are “members or directors of [a] quasi-public agency,” for purposes of § 1-83 (a) (1). The term “quasi-public agency” is defined in the ethics code to include the following entities:

Connecticut Innovations, Incorporated, the Connecticut Health and Education Facilities Authority, the Connecticut Higher Education Supplemental Loan Authority, the Connecticut Student Loan Foundation, the Connecticut Housing Finance Authority, the State Housing Authority, the Materials Innovation and Recycling Authority, the Capital Region Development Authority, the Connecticut Lottery Corporation, the Connecticut Airport Authority, the Connecticut Health Insurance Exchange, the Connecticut Green Bank and

the State Education Resource Center.¹⁷

Although that list does not include any of the Committees, it does include an entity with which they are associated, namely, CI. Given that association, the question becomes whether the Committees' appointed members are "members or directors" of CI.

As for "directors," the word is not defined in § 1-83 (or elsewhere in the ethics code), so we look to General Statutes § 1-1 (a), which directs that, "[i]n the construction of the statutes, words and phrases shall be construed according to the commonly approved usage of the language" "[T]o ascertain [a word's] commonly approved meaning," "[w]e look to [its] dictionary definition."¹⁸ The dictionary definition of "directors" is this: "Persons appointed or elected according to law, authorized to manage and direct the affairs of a corporation or company."¹⁹ The enabling legislation for CI provides that it "shall be governed by a board of seventeen directors,"²⁰ in which "[t]he powers of the corporation shall be vested"²¹ Thus, members of this seventeen-person governing board are CI's "directors," meaning that the appointed members of the three Committees are not.

Nor are they "members" of CI, for purposes of § 1-83 (a) (1)'s phrase "members or directors of each quasi-public agency." The word "members" (like the word "directors") is not defined in the ethics code, so we look to its dictionary definition to "ascertain its commonly approved meaning."²² The dictionary defines "members" as "one of the individuals composing a society, community, association, or other group"²³ Under that definition, the appointed members of the Committees arguably could be considered "members" of CI, in light of the Committees' respective relationships with it. But it appears that the legislature did not intend the word

¹⁷(Emphasis added.) General Statutes § 1-79 (12).

¹⁸*14 R.C. Equity Group, LLC v. Zoning Commission*, 285 Conn. 240, 254 n. 17 (2008).

¹⁹Black's Law Dictionary (Abridged 6th Ed. 1991).

²⁰General Statutes § 32-35 (b).

²¹General Statutes § 32-37 (a).

²²*14 R.C. Equity Group, LLC v. Zoning Commission*, supra, 285 Conn. 254 n. 17.

²³Advisory Opinion No. 91-17, Connecticut Law Journal, Vol. 52, No. 51, p. 3D (June 25, 1991), quoting Webster's Third New International Dictionary (1971).

“members,” as used here, to have such an elastic meaning.

First off, if the word “members” was given such an all-inclusive meaning, then it would capture CI *employees*, for they certainly can be said to be “individuals composing” CI. But the legislature could not have intended this. Why? Because such employees (i.e., employees of a quasi-public agency) are captured by a completely separate category of filers under § 1-83 (a) (1): “such *employees of quasi-public agencies* as the Governor shall require.”²⁴ Clearly, therefore, the legislature did not intend for the word “members,” as used here, to sweep so broadly.

Bolstering that conclusion is the doctrine of “*noscitur a sociis*” (Latin for “it is known by its associates”). Under this doctrine, “the meaning of a particular word . . . in a statute is ascertained by reference to those words . . . with which it is associated.”²⁵ The doctrine “acknowledges that general and specific words are associated with and take color from each other, *restricting general words to a sense . . . less general.*”²⁶ Applying that doctrine here, the general word “members” must “take color” from the specific word “directors.” And in taking on the hue of the word “directors,” the word “members” becomes simply another name for individuals serving on a quasi-public agency’s governing board.

Which makes sense, given that, in the various quasi-public agencies’ enabling legislation, the words “members” and “directors” are used interchangeably.²⁷ Taking CI as an example, throughout its enabling legislation, the word “members” is employed multiple times to refer to individuals serving on CI’s board of directors:

The corporation shall be governed by a board of seventeen directors. Nine ***members*** shall be appointed by the Governor Four ***members*** shall be the Commissioner of Economic and Community Development, the president of the Board of Regents for Higher Education, the Treasurer and the Secretary of

²⁴(Emphasis added.)

²⁵*Staples v. Palten*, 214 Conn. 195, 199 (1990).

²⁶(Emphasis added; internal quotation marks omitted.) *Id.*, 200.

²⁷See, e.g., General Statutes §§ 10a-179a (Connecticut Higher Education Supplemental Loan Authority), 15-120bb (Connecticut Airport Authority), 32-35 (Connecticut Innovations, Incorporated).

the Office of Policy and Management, who shall serve ex officio and shall have all of the powers and privileges of a *member* of the board of directors. Each ex-officio *member* may designate his deputy or any member of his staff to represent him at meetings of the corporation with full power to act and vote in his behalf. Four *members* shall be appointed as follows: One by the president pro tempore of the Senate, one by the minority leader of the Senate, one by the speaker of the House of Representatives and one by the minority leader of the House of Representatives. Each *member* appointed by the Governor shall serve at the pleasure of the Governor but no longer than the term of office of the Governor or until the member's successor is appointed and qualified, whichever is longer. Each *member* appointed by a member of the General Assembly shall serve in accordance with the provisions of section 4-1a. A director shall be eligible for reappointment. The Governor shall fill any vacancy for the unexpired term of a *member* appointed by the Governor. The appropriate legislative appointing authority shall fill any vacancy for the unexpired term of a *member* appointed by such authority.²⁸

It appears quite plain, then, that the legislature intended the phrase “members or directors of each quasi-public agency,” as used in § 1-83 (a) (1), to refer to individuals serving on each quasi-public agency’s governing board. And because the appointed members of the three Committees do not sit on CI’s governing board, we conclude that they are not “members or directors of [a] quasi-public agency” for purposes of § 1-83 (a) (1).

Our conclusion finds support in Advisory Opinion No. 89-6, which involved questions concerning members of CI’s predecessor, the Connecticut Product Development Corporation (“CPDC”).²⁹ CPDC was “governed by a board of seven directors” and had “a separate loan board, the Connecticut Innovation Development Loan Fund (CID), whose members [were] appointed by the CPDC board.”³⁰ A question was whether § 1-83’s filing requirement

²⁸(Emphasis added.) General Statutes § 32-35 (b).

²⁹Connecticut Law Journal, Vol. 50, No. 35, p. 5C (February 28, 1988).

³⁰Id.

applied not just to the quasi-public agency's governing board (i.e., the CPDC board), but also to the "separate loan board" (i.e., the CID board).³¹ The answer, according to the State Ethics Commission, was "no," and one of the reasons was this: that § 1-83's filing requirement applies to "members or directors" of each quasi-public agency, and members of the CID board are not "members or directors" of the CPDC.³²

2. "[M]embers of the Executive Department and . . . employees of quasi-public agencies as the Governor shall require"?

That leaves just one category of filer under § 1-83 (a) (1) that has even a remote possibility of including the Committees' appointed members: "members of the Executive Department and . . . employees of quasi-public agencies as the Governor shall require" These are the filers whom the Governor designates, and they may be designated only if they happen to be either "members of the Executive Department" or "employees of quasi-public agencies." So the question for us is an obvious one: Do the appointed members of any of the three Committees fit within either of those groups? If so, the Governor may designate them as filers under § 1-83 (a) (1).

The first group—"members of the Executive Department"—was the subject of Advisory Opinion No. 91-17.³³ What prompted it was a decision by the then Governor to designate a number of state employees (among others) as filers under § 1-83 (a).³⁴ The state employees objected, arguing that the Governor's authority to designate "members of the Executive Department" extended only as far as "public official" members of the Executive Department and did not reach the "state employee" members.³⁵ Not so, according to the State Ethics Commission. After looking to the definition of "members"—i.e., "one of the individuals composing a society, community, association, or other group"—it concluded: "Given this unambiguous definition, there exists no basis, under the rules of statutory construction, for accepting the claim that the unmodified term 'members' extends only to the public official members, not the

³¹Id., 7C.

³²Id.

³³Connecticut Law Journal, Vol. 52, No. 51, supra p. 3D.

³⁴Id.

³⁵Id.

state employee members, of the Executive Branch.”³⁶

From that opinion, we glean that the phrase “members of the Executive Department” in § 1-83 (a) (1) translates as follows: state employees and public officials of the Executive Branch.

Applying that translation here, the appointed members of the Committees are, as noted, “public officials,” but they are not, as such, part of the “Executive Branch.” To be sure, some of them are appointed by an Executive Branch official (i.e., the Governor), and two of the Committees have Executive Branch officials serving *ex officio*. Even so, the Committees are not listed in the Connecticut State Register and Manual³⁷ under “State Government-Executive & Administrative” as “State Departments and Related Agencies Boards and Commissions.” And that makes sense given that the Committees’ enabling statutes are located in chapter 581 of the General Statutes, which is titled: “*Innovation Capital Act of 1989. Connecticut Innovations, Incorporated.*”³⁸ In other words, the Committees’ enabling statutes are housed along with an entity (CI) whose own enabling statute provides that it is “*not . . . a department, institution or agency of the state.*”³⁹ If, then, the Committees and their appointed members are part of anything, it is CI—not the Executive Branch. We conclude, therefore, that the Committees’ appointed members are not “members of the Executive Department” under § 1-83 (a) (1).

Nor are they “employees of quasi-public agencies,” for purposes of § 1-83 (a) (1). True, each of the Committees has ties to a quasi-public agency, specifically, CI, but their appointed members simply cannot be characterized as “employees” of that agency.

The word “employees” finds no definition in the ethics code, so once again we look to the dictionary.⁴⁰ Black’s Law Dictionary defines “employee” in these terms:

³⁶Id.

³⁷“The Secretary [of the State] shall, annually, prepare and publish a Register and Manual that shall give a complete list of the state, county and town officers, of the judges of all courts and of the officials attending thereon. . . .” General Statutes § 3-90 (a).

³⁸(Emphasis added.)

³⁹(Emphasis added.) General Statutes § 32-35 (a).

⁴⁰*14 R.C. Equity Group, LLC v. Zoning Commission*, supra, 285 Conn. 254 n. 17.

A person in the service of another under any contract of hire, express or implied, oral or written, where the employer has the power or *right to control* and direct the employee in the material details of how the work is to be performed. One who works for an employer; a person working for *salary or wages*.⁴¹

A recent decision of our Appellate Court—*Commission on Human Rights and Opportunities v. Echo Hose Ambulance*⁴²—helps make sense of that definition, particularly its use of the terms “right to control” and “salary or wages.” In defining “employee” for purposes of another statute, the Court spoke of two tests, a “remuneration” (i.e., “payment”) test and a “right of control” test, noting: “only if the remuneration test is satisfied would [we] apply the . . . ‘right of control’ test.”⁴³ Put differently, to determine whether one is an “employee” of another, we ask, first, whether the former receives from the latter any remuneration (e.g., salary or wages).⁴⁴ If not, then no “employee.” But if so, we ask, second, whether the latter has “the right of general control of the [former’s] work[.]”⁴⁵ If not, then (again) no “employee.”

We must first ask, therefore, whether the appointed members of any of the Committees receive remuneration from CI. As for members of the Bioscience Innovation Advisory Committee and the Regenerative Medicine Research Advisory Committee, the answer is “no,” for they receive nothing more than reimbursement for expenses incurred in performing their duties.⁴⁶ Having failed the “remuneration” test, they cannot be considered CI “employees.” As for members of the Regenerative Medicine Research Peer Review

⁴¹(Emphasis added.) Black’s Law Dictionary (Abridged 6th Ed. 1991).

⁴²156 Conn. App. 239 (2015).

⁴³Id., 252.

⁴⁴Id., 251.

⁴⁵(Internal quotation marks omitted.) Id., 248.

⁴⁶With respect to the Bioscience Innovation Advisory Committee, § 32-41bb (c) provides that “[n]o member . . . shall receive compensation for such member’s services” With respect to the Regenerative Medicine Research Advisory Committee, its enabling statute is silent on the issue of compensation, but the petitioner has confirmed that its members “receive no compensation for services as committee members.” E-mail from the petitioner to Brian O’Dowd, Deputy General Counsel, Office of State Ethics (August 6, 2015) (on file with the Office of State Ethics).

Committee, though, the answer is “yes,” for they are authorized to “receive compensation from [CI] for reviewing grant-in-aid applications”⁴⁷ Having passed the “remuneration” test, they move on to the “right of control” test.

Under the common-law “right of control” test—which is “generally applied . . . to distinguish between employees and independent contractors”—the “controlling consideration” in determining whether an employee-employer relationship exists is this: “Has the employer the general authority to direct what shall be done and when and how it shall be done—the right of general control of the work?”⁴⁸ In this case, the employer, CI, does not appear to have any such control over the work of members of the Regenerative Medicine Research Peer Review Committee. Indeed, according to the petitioner,

[s]ince the purpose of peer review is an independent, outside evaluation of scientific merit, the Peer Review Committee members were not under the direction or control of CI, nor did they have any other attributes of CI employees. CI simply arranged for their participation in the process as part of its statutory responsibility to provide administrative support to the Regenerative Medicine Research Advisory Committee.⁴⁹

Because CI has no control over the work of these committee members, the members fail the “right of control” test, and so we conclude that they are not “employees of [a] quasi-public agenc[y]” under § 1-83 (a) (1).

Having concluded that the appointed members of the three Committees are neither “employees of [a] quasi-public agenc[y]” nor “members of the Executive Department” for purposes of § 1-83 (a) (1), it follows that they may not be designated as filers under that provision.

⁴⁷General Statutes § 32-41mm (d).

⁴⁸(Internal quotation marks omitted.) *Commission on Human Rights and Opportunities v. Echo Hose Ambulance*, supra, 156 Conn. App. 248.

⁴⁹E-mail from the petitioner to Brian O’Dowd, Deputy General Counsel, Office of State Ethics (July 23, 2015) (on file with the Office of State Ethics).

Conclusion

Given that the appointed members of the three Committees do not fit within any of the categories of filers listed in § 1-83 (a) (1), we must conclude that they need not file Statements of Financial Interests under that provision.

By order of the Board,

Dated _____

Chairperson